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ATTORNEY DOCKET NO. GPS-C1SCH
Serial No.: 10/065,120

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Scott C. Harris	Group Art Unit 3662
Appl. No.	:	10/065,120	
Filed	:	September 18, 2002	
For	:	POSITION PRIVACY IN AN ELECTRONIC DEVICE	
Examiner	:	G. Issing	

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APPLICANTS BRIEF ON APPEAL

Sir:

Applicant herewith files this Appeal Brief under 37 C.F.R. 41.37, thereby perfecting the Notice of Appeal that was originally filed on June 6, 2005. The sections required by the rules follow.

The present application qualifies for small entity status under 37 C.F.R. § 1.27.

Please charge the \$250 fee for the Appeal Brief to deposit account 50-1387.

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Real Party In Interest

Scott C. Harris, the inventor, is the real party in interest

Related Appeals and/or Interferences

There are no known related appeals and/or interferences

Status of Claims

Claims 1-2, 4-7, 9-13, 15-20, 22-31, 35 and 37-50 are appended. Claims 1-7, 9-13, 15, 17-20, 22-31 and 35 are rejected. The remaining claims 16 and 37 - 50 are withdrawn from consideration.

Status of Amendments

An Amendment After Final was filed on May 4, 2005. This amendment was entered.

Summary of Claimed Subject Matter

Claim 1 requires a cellular phone that has a position detection module which determines the position of the cellular phone and reports information indicative of the position. The positioning device 210 is described on page 2 of the specification, seventh line from the bottom. The position detector is described as being able "to determine its position and report that position to a remote source..." page 2, last two

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lines. Claim 1 also defines an override control that is actuated to enhance privacy, and which produces a signal state that prevents the position detection module from determining its position for one embodiment, this can read on a number of embodiments, including the condition block control 220 which can "deactivate the function of the positioning device 210". See page 2 fourth line from the bottom. Other embodiments may include the cover 350 described page 4 beginning at line 10 which prevents the device from receiving GPS information. Another embodiment is described paragraph 18 on page 4, specifically an active jammer module that prevents the device from receiving information.

Claim 4 requires operating a cellular phone in a first mode in which a position is detected and sent. This is described the last three lines of page 2. Claim 4 defines an action which prevents the position of the cellular phone from being detected, see page 2 line 4 from the bottom. Claim 4 also requires testing the privacy, see paragraph 14, page 3.

Page 9 defines an electronic device with a cellular phone that has a detection module, see page 2 line 7 from the bottom, and an override control formed of a single button that prevents the position detection module from reporting information in any mode. In general, see paragraph 11 extending from page 2 up to page 3.

Claim 10 requires telephone electronics that enables communication and a position detection module that determines the position of the portable phone, see generally paragraph 11, page 2-3. A recording device is described at the bottom of page 2. The manually operable override control is responsive to request privacy

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enhancement in any mode, to allow the telephone electronics to continue, see generally page 2 second line from the bottom.

Claim 20 defines an electronic device with a telephone and a position detection module, see generally paragraph 11, and a position reporting control which is pressed see generally the actuation mechanism described on page 2 from the bottom.

Grounds of Rejection to be Reviewed on Appeal

Are claims 1-7, 9-15, 17-20, 22-31 and 35 properly rejected over Lemelson in view of Seiple?

Are claims 1-7, 9-15, 17-20, 22-31 and 35 properly rejected as being unpatentable over Zellner?

Argument

Rejections over Lemelson in view of Seiple.

First, with all due respect, the hypothetical combination of Lemelson in view of Seiple is an improper combination, and would not be made by a person having ordinary skill in the art. Lemelson teaches a system which uses GPS to track an object, for example when it has been stolen. In order to operate Lemelson, one may require for example, A personal identification number, or PIN. However, once that PIN is entered, the proper owner can track their object.

In this system, the owner must be able to track their object when needed. Therefore, position information must be acquired. Anything that would defeat obtaining positioning information, would defeat Lemelson from tracking the object, as is its intent.

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If someone who stole the object could simply turn off tracking, Lemelson's entire object would be thwarted.

Seiple, is consistent in that regard. As explained below, it makes no sense to operate Seiple in a way that turned off the GPS. Using Seiple in a way that required turning off the GPS would destroy Seiple's intended function of being usable as an emergency location device. Accordingly, a person having ordinary skill in the art would not make the hypothetical combination in the way that was suggested by the rejection.

Seiple in fact does not prevent the information from being obtained, and any modification or operation of Seiple which would prevent that information from being obtained would destroy Seiple's inherent functionality. Seiple is a system which is used for emergency location of someone who falls overboard from the ship. Of course, Seiple's object to save power. However, Seiple does not prevent GPS information from being obtained. Seiple must obtain some GPS information, otherwise, as well known, when needed in an emergency, it would require obtaining a GPS fix and calculating information from the satellite. It only stands to reason that Seiple must be usable at all times: Seiple must get as much GPS information as they can while keeping them outlined the objected to save power. Seiple must be able to quickly obtain its position.

However, the rejection attempts to combines Seiple with Lemelson to suggest that GPS should be turned off. Note that the claim requires "preventing said position detection module from determining its position". This is exactly the opposite of what Seiple suggests. Seiple must have the position. If Seiple did not have the position, it would not be usable in an emergency, since it would then have to obtain that position. Any attempt to modify Seiple in a way that prevents cycle from obtaining its position

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would destroy Seiple's inherent functionality. Seiple teaches obtaining as much information as they can, quite the opposite of the present claim which teaches preventing obtaining the information.

Moreover, even if Seiple could somehow be said to stand for the suggestion that GPS should be turned off, modifying Lemelson to turn off the GPS would destroy Lemelson's intended function. It would no longer be possible to track stolen objects if the thief could simply turn off GPS tracking.

The rejection makes many technical arguments about when the device is put to sleep, how the position fix is determined, almanac data, and the like. However, the fact remains that Seiple's expressed teaching is that the position must be usable at all times. This is precisely the opposite of the present system, and specifically claim 1, which teaches preventing the device from obtaining its position. With all due respect, Seiple teaches away from this subject matter. For these reasons, one having ordinary skill in the art would not make a hypothetical combination of Lemelson in view of Seiple, in the way suggested by the Official Action.

Analogously, any modification of Seiple to make it used for "position privacy control" as in claim 9, would go against Seiple's expressed teaching. Seiple teaches a system usable in an emergency, that is one where the position is always available. It makes no sense that a device usable in an emergency would have a position privacy control.

To sum up the above, therefore, any attempt to modify Seiple in a way that would prevent the overall system from determining its position, would destroy the inherent functionality of Seiple, and contradict Seiple's teaching. Under Federal Circuit

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Law, this would be an improper combination and an improper modification of Seiple.

Moreover, even if the combination were made, the claims would still not be obtained. Claim 1, for example, defines preventing the position detection module from determining its position. Lemelson does not teach or suggest this feature. Lemelson teaches using GPS to track an object, for example when it has been stolen. Security for the GPS may require a PIN. Moreover, that PIN must be capable of being entered remotely. The person who stole the item would certainly not be expected to cooperate in entering the PIN. Any attempted modification so that position detection could be overridden would certainly destroy the intended functionality of Lemelson. Turning off the position tracking would prevent Lemelson from being used to track stolen objects. The Lemelson system must be able to track its location, or it would not be able to be used for locating objects.

The hypothetical combination would provide a Lemelson type system along with Seiple's teaching to save power by turning off the circuitry between the times that are necessary to obtain a fix. This device would still determine its position. It might turn off certain circuitry between determining positions, and it might have a power saving inhibiting function, but it would not teach a signal state that "prevents said position detection module from determining its position but which allows other parts of said electronic device to operate" as claimed. Therefore, claim 1 should be allowable for these reasons.

Claim 4 specifies testing the cellular phone while in the privacy enhanced mode. There is no teaching or suggestion of such testing in Lemelson in view of Seiple. The testing using a network service of claim 5 is not taught in this hypothetical combination.

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The testing by updating software of claim 6 is not taught by this hypothetical combination. Quite simply, there is nothing even remotely similar to this in the cited prior art. These claims should be allowable on their own merits.

Claim 9 requires a single button that is pressed to activate the position privacy control. The rejection states, without any evidence to support this contention, that "it would have been obvious to one having ordinary skill in the art to utilize a single dedicated button in view of the teachings of Lemelson, who clearly suggests entry of an inhibiting number via the keyboard"... First of all, nothing in Lemelson or Lemelson in view of Seiple teaches that this system is used for position privacy control. Column 4, for example lines 60-65, teach that Lemelson is used for security, not for privacy. Seiple teaches emergency use, and never teaches privacy.

When used for security, of course a PIN needs to be used. However, this is a relatively complicated number that needs to be entered - certainly much more complicated than the simple button press as claimed. Claim 9 specifies a single button which is pressed to activate a position privacy control. A single button would not be usable in Lemelson; Lemelson intends for the device to be secured. A single button would have no security whatsoever. Therefore, any attempt to modify Lemelson to use a single button as claimed, would go against the teaching in Lemelson of obtaining security using personal identification numbers, see column 4 lines 48-56. Therefore, claim 9 is completely allowable over Lemelson in view of Seiple.

Claim 10 specifies that the device is a portable telephone, not taught or suggested by Lemelson in view of Seiple. Moreover, claim 10 specifies the single press, again which is quite different from the subject matter of Lemelson.

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Claim 11, which specifies preventing the position detection module from determining its position, should be allowable for reasons discussed above with respect to claim 1.

Claim 20 specifies a manual button that is pressed once to enhance security. Nowhere is there any teaching or suggestion of this in Lemelson in view of Seiple. Lemelson requires some kind of security code, not a single button press, as claimed. Claim 22 should be allowable for reasons discussed above with respect to claim 1.

Rejections over Zellner

Claims 1-7, 9-15, 17-20, 22-31 and 35 stand rejected as allegedly being unpatentable over Zellner. The rejection alleges that Zellner teaches disabling the location system. However, this flies in the face of Zellner's disclosure column 7 lines 30-48. This cited section specifies that the processor "removes the location information" see column 7, lines 35-36, and 39-40. In order to "remove" the location, it stands to reason that the location must have been produced in the first place. Since Zellner clearly teaches that the information is removed, not prevented from being determined, each of the claims which specify preventing the device from determining the position, should be allowable. Hence, claims 1, 11 and 22 should be allowable for these reasons. Nothing in Zellner teaches anything about the testing of claim 4, and therefore, claim 4 is additionally allowable along with claims 5-7 which depend therefrom.

Claim 9 specifies that the override control is a single button that is pressed to activate position privacy control. The top of column 6, for example column 6 lines 1-18

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explain that location blocking could be done by a key sequence such as star 82, a graphical user interface, or the like. All of these are much more complicated than the single button required by claims 9, 10 and 20. The complicated key sequence of Zellner would make it more difficult to use Zellner for privacy enhancement.

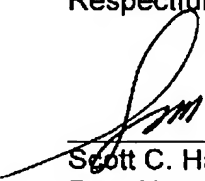
The statement that Zellner could respond to a yes and no prompt to activate or deactivate the block condition ignores the specific words of the claims. Claim 9, for example, requires "a single button which is pressed to activate a position privacy control". A yes or no prompt is not a single button that is pressed to activate privacy, as claimed. Claims 10 and 20 analogously require a single button press to activate the privacy mode. This is not taught or suggested by Zellner. Zellner does not teach a single button operation as claimed - and with all due respect, the attempt to find this in the prior art is an attempt at hindsight reconstruction.

Therefore, and for reasons stated above, the rejection does not meet the Patent Office's burden of providing a prima facie showing of unpatentability.

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Respectfully submitted,

Date: 8/8/05



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Attachments

Claims Appendix

Evidence Appendix (None)

Related Proceedings Appendix (None)

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CLAIMS APPENDIX

1. An apparatus, comprising:

a cellular phone having a position detection module therein which determines a position of said cellular phone and reports information indicative of said position of said electronic device to a remote object; and

an override control, which includes a manual actuating mechanism that is actuated to enhance privacy and which, in response to manual actuation of said actuating mechanism produces a signal state that prevents said position detection module from determining its position, but which allows other parts of said electronic device to operate.

2. An apparatus as in claim 1, wherein said position detection

module is a satellite positioning system receiver.

4. A method, comprising:

operating a cellular phone in a first mode in which its position can be detected by an automatic position sensing device and automatically reported to a remote location;

responsive to an action by a user of a specific type that is made to enhance the privacy, operating said cellular phone in a second, privacy enhanced mode, in which cellular phone functions can be used to place and/or receive calls, but its a position of said cellular phone can not be automatically detected by said automatic position sensing device; and

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testing said cellular phone while operating in said second, privacy enhanced mode, to determine whether privacy is actually enhanced.

5. A method as in claim 4, wherein said testing comprises using a network based service to test whether privacy is enhanced.

6. A method as in claim 5, wherein said network based service updates software that carries out said testing.

7. A method as in claim 4, wherein said action by said user of the specified type comprises actuating an actuation element on the cellular telephone.

9. An apparatus, comprising:

an electronic device including a cellular telephone having a position detection module therein which determines a position of said electronic device and reports information indicative of said position of said electronic device to a remote object; and

an override control, which includes a manual actuating mechanism which is formed of a single button which is pressed to activate a position privacy control that prevents said position detection module from reporting said information about its position, but which allows other parts of said electronic device to operate, wherein said override control operates in response to said manual actuation to produce a signal that prevents said position detection module from reporting any information, in any mode of said electronic device, until said manually deactivated.

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10. An apparatus, comprising:

a portable telephone, including:

- (1) telephone electronics enabling telephone communication;
- (2) a position detection module therein which enables determining a position of said portable telephone as a determined position; and
- (3) a reporting device which reports information indicative of said determined position of said portable telephone to a remote object; and
- (4) a manually operable override control, associated with said portable telephone, operating in response to a manual press of a single button on the portable telephone to request privacy enhancement to prevent said reporting device from reporting any information indicative of the determined position in any mode of operation of said portable telephone, but allowing said telephone electronics to continue to operate.

11. An apparatus as in claim 10, wherein said override control prevents said position detection module from determining said determined position.

12. An apparatus as in claim 10, wherein said operating said override control allows said position detection module to determine said determined position, but prevents said reporting device from reporting said information indicative of said determined position.

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13. An apparatus as in claim 10, wherein said position detection module includes a satellite positioning system device.
15. An apparatus as in claim 10, wherein said override control produces an enable signal state which enables the position detector to determine its position and report that position to said remote object.
16. (Withdrawn) An apparatus as in claim 30, wherein said remote object includes a base station associated with a telephone system.
17. An apparatus as in claim 10, further comprising an indicator which indicates whether the override control is in a state which prevents said reporting device from reporting.
18. An apparatus as in claim 17, wherein said indicator includes an optical indicator.
19. An apparatus as in claim 18, wherein said optical indicator includes an indicator which can be selectively illuminated.
20. An apparatus, comprising:

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an electronic device including a telephone having a first electronics module, and a position detection module therein which determines a position of said electronic device and produces a signal for reporting information indicative of said position of said electronic device to a remote object; and

a position reporting control, which includes a manual button, on the device that is pressed once to enhance security, which is manually actuatable by a user, and which, in response to being pressed once, prevents any reporting of said information about position in any mode of said electronic device until a second press by a user, but which allows said first electronics module to continue to operate after said first specified press and before said second specified press.

22. An apparatus as in claim 20, wherein said first specified actuation prevents said position detection module from determining said determined position.

23. An apparatus as in claim 20, wherein said first specified actuation prevents said position reporting device from reporting information indicative of the determined position.

24. An apparatus as in claim 20, wherein said first electronics module includes communication circuitry, which continues to operate after said first specified actuation.

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25. An apparatus as in claim 24, wherein said apparatus includes a portable telephone, and said first electronics module includes circuitry associated with said portable telephone, including circuitry for communicating with a base station associated with the telephone.

26. An apparatus as in claim 20, further comprising an indicator, which indicates a state of said first specified actuation.

27. An apparatus as in claim 26, wherein said indicator is an optical indicator.

35. A method as in claim 31, further comprising indicating that said reporting is blocked, using an optical indicator.

37. (Withdrawn) A system, comprising:
a test module, associated with an electronic device, and operable to test an amount of privacy for the electronic device.

38. (Withdrawn) A system as in claim 37, wherein said tested module tests whether said electronic device is currently reporting a position.

39. (Withdrawn) A system as in claim 37, wherein said electronic device includes a wireless communication element.

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40. (Withdrawn) A system as in claim 37, wherein said electronic device includes a cellular telephone.
41. (Withdrawn) A system as in claims 39, wherein said electronic device communicates using said wireless communication element to obtain updates to test said amount of privacy.
42. (Withdrawn) A system as in claim 41, wherein said updates include information about latest ways to improperly obtain a position of the wireless communication element.
43. (Withdrawn) A system as in claim 37, wherein said test module attempts to obtain certain information, and evaluates a success at obtaining said information to test said amount of privacy.
44. (Withdrawn) A system as in claim 43, wherein said certain information includes position information of the electronic device.
45. (Withdrawn) A method, comprising:
testing an electronic device to determine its privacy, and reporting a result of said testing.
46. (Withdrawn) A method as in claim 45, wherein said determine privacy

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comprises determining if said electronic device is automatically reporting its position.

47. (Withdrawn) A system as in claim 37, further comprising using said electronic device for wireless communication.

48. (Withdrawn) A system as in claim 47, who further comprising updating a way that testing is carried out using said wireless communication medium.

49. (Withdrawn) A system as in claim 48, wherein said testing is carried out using requests that attempt to violates the users privacy, and evaluating whether the electronic device responds to said requests.

50. (Withdrawn) A system as in claim 49, wherein said updating comprises updating new attempts to violate the users privacy.

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Evidence Appendix

(None)

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Related Proceedings Appendix

(None)